

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12063 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VIKRAMSINH NAVUJI CHAVDA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12063 of 2002
MS BANNA S DUTTA for Petitioner No. 1
MR PRADEEP D BHATE, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 19/05/2003

ORAL JUDGEMENT

The petitioner detenu, Vikramsinh Navuji Chavda,
in this petition, has challenged the order of detention

dated 8.11.2002 at Annexure.A to the petition, passed by the Commissioner of Police, Ahmedabad City, i.e. respondent no.1 herein, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention supplied to the petitioner of the even date, the detaining authority has placed reliance on four Prohibition cases registered against the petitioner; two of which are pending trial and the other two are under investigation. Over and above the above aforesaid Prohibition cases, the detaining authority has also placed reliance on the alleged incidents of 18.7.2002 and 15.10.2002 which took place at Kokhara area of Ahmedabad city wherein the petitioner was involved in of creating law and order situation, as can be seen from the statements of the witnesses recorded, whose identity has not been disclosed, while claiming privilege under Section 9(2) of the PASA Act.

Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and therefore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area, the detention of the petitioner was necessary. Hence, the order of detention has been passed under Section 3(2) of the PASA Act against the petitioner.

Learned Counsel Ms.Banna Dutta appearing for the petitioner raised many contentions. However, it is not necessary for me to refer to all the contentions since the petition is capable of being disposed of only on the sole ground of non-supply of documents and thus violating the provisions of Article 22(5) of the Constitution of India of denying petitioner to make an effective representation. Learned Counsel for the petitioner submits that even though the petitioner has made a representation through the Advocate, dated 22nd November 2002, addressed to the Honourable Minister for State for Home, Sachivalaya, Gandhinagar, demanding copies of the statements of witnesses D.B.Solanki, Pravinkumar, Jayantibhai etc. recorded under Section 161 of the Code of Criminal Procedure, 1973, copies of grounds of detention and order of detention of the co-detenu who have been detained under the PASA Act, the authorities have not supplied the same to the petitioner. Therefore, in absence of the aforesaid documents, the petitioner could not make an effective representation and hence, the

order of detention is bad in law which requires to be quashed and set aside. This ground is taken in paragraph 22 of the petition.

In the affidavit-in-reply filed by the Commissioner of Police, Ahmedabad City, it is inter-alia pointed out that the copies of all the relevant documents which have been relied upon by the detaining authority have been supplied to the detenu along with the grounds of detention and the detenu was replied accordingly. Learned AGP Mr. Bhate showed me a letter dated 1.1.2003 written on behalf of the detaining authority addressed to the detenu wherein it has been pointed out that the demand made by the Advocate of the detenu for the statements recorded of the witnesses have been supplied and that over and above the said statements, no other statements have been recorded and therefore, there is no question of supplying the same to the detenu. Besides the other documents on which the reliance is placed, have also been given and therefore, the question of supplying other documents also does not arise.

Learned Counsel for the petitioner invited my attention to the FIR with respect to Prohibition Case No. 2092 of 2002 wherein one Constable Jayantibhai is shown as a member of the raiding party along with Constables Jivrajbhai, Rameshkumar and Pareshkumar. According to the learned Counsel, in the representation addressed on behalf of the petitioner, a specific demand was made for supplying the statement of Constable Jayantibhai and instead of supplying the same, the detaining authority has supplied the copies of the statement of one Constable Motibhai Ranchhodbhai, at page 37 of the paper book. It is, therefore, contended that the case on hand is of total non-application of mind on the part of the detaining authority.

Having gone through the reply affidavit as well as the letter written on behalf of the detaining authority, it is clear that the detenu has been supplied the relevant statements of the witnesses on which the reliance is placed except the statement of Constable Jayantibhai, who is shown as a member of the raiding party of Prohibition Case No. 2092 of 2002. It is also clear that even though Police Constable Motibhai Ranchhodbhai is not referred to in the raid carried out against the detenu with respect to the said offence, his statement was in fact supplied to the detenu. Page 48 is the FIR supplied to the petitioner wherein the name of Jayantibhai Parmar is shown as one of the witnesses of Prohibition Case No. 2092 of 2002. Thus, from the

documents on record, it is clear that even though Jayantibhai who is cited as a witness in that offence and whose statement was also recorded, the said statement has not been supplied to the petitioner. In this view of the matter, I am clearly of the opinion that the document on which reliance is placed by the detaining authority, having not supplied to the detenu, he could not make an effective representation guaranteed under Article 22(5) of the Constitution of India and thus, there is violation of the said provision. Under the circumstances, the impugned order vitiates only on this count and the petition is required to be allowed.

In the result, the petition is allowed. The impugned order of detention dated 8.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)
Sreeram.